

ATTACHMENT

PROVISIONS FOR PRIVATE SCHOOL STUDENTS, TEACHERS AND OTHER EDUCATION PERSONNEL IN *No Child Left Behind Act of 2001*

I. Equitable Participation

Title IX of ESEA, sections 9501-9504, provides the framework for equitable participation in programs providing services governed by Uniform Provisions.

Under the Uniform Provisions, local education agencies (LEA's) or other entities receiving federal financial assistance are required to provide services to eligible private school children, teachers and other personnel consistent with the number of eligible children enrolled in private elementary and secondary schools in the LEA, or in the geographic area served by another entity receiving federal financial assistance. These services and other benefits must be comparable to the services and other benefits provided to public school children and teachers participating in the program and they must be provided in a timely manner (Section 9501(a)(3), p. 1975).

To ensure equitable participation, the LEA or other entity receiving federal financial assistance must assess, address and evaluate the needs of private school students and teachers; spend an equal amount of funds per student to provide services (Section 9501(a)(3), p. 1975); provide private school students and teachers with an opportunity to participate in activities equivalent to the opportunity provided public school students and teachers (Section 9501(a)(1), p. 1975); and offer services that are secular, neutral and non-ideological (U.S. Department of Education, NCLB Summary, p. 1; and Section 9501(a)(2), p. 1975).

Three programs include special provisions for the equitable participation of private school students and teachers. The requirements of these differ slightly from the Uniform Provisions. They are: Title I, Part A, Improving the Academic Achievement of the Disadvantaged; Title V, Part A, Innovative Programs; and Title V, Part D, Subpart 6, Gifted and Talented Students.

II. Consultation

Section 9501(c)(1) states that “to ensure timely and meaningful consultation, a State educational agency (SEA), local educational agency, educational service agency, consortium of those agencies, or entity shall consult with appropriate private school officials during the *design and development* (sic) of the programs” (p. 1976) under NCLB. The focal point of section 9501(c)(3) is that consultations must occur before any decision is made that could affect the ability of private school students, teachers and other education personnel to receive benefits under ESEA and must continue throughout the implementation and assessment of activities. Consultation is initiated by the SEA, LEA, local educational agency, educational service agency, or consortium and, at a minimum, should address “issues such as:

- (A) how children’s needs will be identified;
- (B) what services will be offered;
- (C) how, where, and by whom the services will be provided;
- (D) how the services will be assessed and how the results of the assessment will be used to improve those services;
- (E) the size and scope of the equitable services to be provided to the eligible private school children, teachers, and other educational personnel and the amount of funds available for those services; and
- (F) how and when the agency, consortium, or entity will make decisions about the delivery of services, including a thorough consideration and analysis of the views of the private school officials on the provision of contract services through potential third-party providers” (p. 1976).

A. Disagreement

In addition, Section 9501(c)(2) states that, if after a thorough consideration of the views of private school officials, the agency, consortium, or entity disagrees with the views of the private school officials on the provision of services through a contract, the agency, consortium, or entity must provide a written explanation of the reasons why it has chosen not to use a contractor (p. 1976).

B. U.S. Department of Education: Recommended Timeline for Consultation

Late fall of the current school year:

- Set up consultation timeline for the following year.
- LEA secures a complete list of private schools. This information can be found at:

<http://www.ed.gov/offices/list/oii/nonpublic/locator.html>

Early winter of the current school year:

- LEA mails intent to participate to all private schools
- LEA receives poverty data (Title I)

Mid-winter of the current school year:

- LEA discusses available funds
- LEA works with officials of private schools to design program

Spring of the current school year:

- LEA conducts all necessary actions, including ordering materials, and informs private schools of actions
- Program is ready to begin next fall

III. Appeals

Section 9503(a)(b) details procedures for presenting complaints. Initially, the individual(s) or organization(s) alleging a violation of section 9501 by a SEA, LEA, educational service agency, consortium of those agencies, or entity must submit the complaint to the State, California Department of Education Elementary Education Office, for a written resolution within a reasonable amount of time. The appeals process and subsequent policies are currently being defined. An advisory will be disseminated once these are finalized. If the resolution is not acceptable, the interested party may appeal the decision to the Secretary within 30 days. The secretary shall investigate and resolve the appeal not later than 120 days after receipt of the appeal (pp. 1977-1978).

IV. Programs in the NCLB Act that Require Equitable Participation

The following programs in the *No Child Left Behind Act* of 2001 require equitable participation by private school students, teachers, and other education personnel. In addition to the guidelines previously delineated, each of the subsequent major programs has supplementary mandates.

A. Title I – Improving the Academic Achievement of the Disadvantaged

- *Title I, Part A – Improving Basic Programs Operated by Local Educational Agencies*
 - a) Section 1120(b)(1) suggests that, in addition to the issues listed above, meaningful consultation should also include the method or sources of data that are used to determine the number of children from low-income families in participating school attendance areas who attend private schools (p. 1509).

- b) Methods for calculation to ensure allocation for equitable services may be done by using free and reduced lunch counts, survey, comparable data, or proportionality (Section 1120(c), p. 1510).
- c) Furthermore, each LEA must maintain in the agency's records and provide to the SEA involved a written affirmation signed by officials of each participating private school that the consultation has occurred (Section 1120(b)(4), p. 1510).

- ***Title I, Part B – Student Reading Skills Improvement Grants***

Participation in Reading First and Even Start Family Literacy is governed by the Uniform Provisions (Section 9501(b)(3), p. 1976). Private school children in the areas served by public schools receiving Reading First and Even Start Family Literacy funds are eligible for services (U.S. Department of Education, NCLB Summary, p. 3).

- ***Title I, Part C – Education of Migratory Children***

The Migrant Education program is governed by the Uniform Provisions (Section 9501(b)(3), p. 1976) and requires the equitable participation of private school migrant students and their teachers, and other education personnel in schools located in targeted areas (U.S. Department of Education, NCLB Summary, p. 3).

B. Title II – Preparing, Training and Recruiting High Quality Teachers and Principals

- ***Title II, Part A: Teacher and Principal Training and Recruiting Fund***

The Teacher and Principal Training and Recruiting Fund provides assistance for preparing, training, recruiting and retaining high-quality teachers. This program is governed by the Uniform Provisions (Section 9501(b)(3), p. 1976) which requires equitable participation of nonprofit private school teachers and other education personnel only to the extent that the LEA uses its funds for professional development. Moreover, equitable participation also extends to nonparticipation. If the LEA selects not to apply for these funds the nonprofit private school has no recourse (Section 2112(b)(12), p. 1624; and U.S. Department of Education, NCLB Summary, p. 3).

Additionally, if the professional development needs of the nonprofit private school teachers are different from those of public school teachers, the LEA, in consultation with nonprofit private school representatives, should develop a separate program. Consultation and coordination are essential to ensuring high-quality, sustained, intensive, and classroom-focused professional development activities for private school teachers. LEAs must assess the needs of nonprofit private school teachers in designing the professional development program for private school teachers (Section 9501(c), p. 1976).

- ***Title II, Part B: Math and Science Partnerships***

The Mathematics and Science Partnerships program provides funds to improve mathematics and science teaching through a variety of activities. At the current appropriations level, partnerships must include an SEA; an engineering, math or science department of an institution of higher education (IHE); and a high-need LEA. Nonprofit private schools may be members of these partnerships (Section 2201(b)(1), p. 1643). The Mathematics and Science Partnerships program is governed by the Uniform Provisions and requires the equitable participation of teachers who teach in nonprofit private schools located in school districts where grants are awarded (U.S. Department of Education, NCLB Summary, p. 4).

- ***Title II, Part D: Enhancing Education through Technology***

The Enhancing Education Through Technology program provides funds for innovative initiatives to support the integration of education technology into classrooms to improve teaching and learning, including effective integration of technology resources and systems with teacher training and professional development to establish research-based instructional models. This program is governed by the Uniform Provisions (Section 9501(b)(3), p. 1976) and requires the equitable participation of students and teachers in nonprofit private schools located in school districts where grants are awarded (U.S. Department of Education, NCLB Summary, p. 4).

C. Title III – Language Instruction for Limited English Proficient and Immigrant Students

The English Language Acquisition, Language Enhancement and Academic Achievement program provides funds for helping eligible immigrant and limited English proficient (LEP) children attain English proficiency and meet the same challenging state academic standards as all children are expected to meet. Funds must be used for increasing the English proficiency of eligible immigrant and LEP children by providing high-quality language instruction and high-quality professional development. Eligible nonprofit private school students and teachers whose schools are located within an LEA that receives a subgrant from the state are eligible to participate in this program, as required by the Uniform Provisions (U.S. Department of Education, NCLB Summary, p. 4).

D. Title IV – 21st Century Schools

- ***Title IV, Part A – Safe and Drug-Free Schools and Communities***
- ***Title IV, Part B – 21st Century Community Learning Centers***

Section 9501(b)(3) of the Uniform Provisions apply to both the Safe and Drug-Free Schools and Communities program and the 21st Century Community Learning Centers program and require the equitable participation of nonprofit private school students, teachers and other education personnel who are part of the target population (U.S. Department of Education, NCLB Summary, p. 5).

E. Title V - Promoting Informed Parental Choice and Innovative Programs

- ***Title V, Part A – Innovative Programs***

“Innovative Programs support education reform and innovative school improvement programs to improve school, student and teacher performance. Nonprofit (sic) private school students, teachers and other education personnel may receive professional development, library materials, educational equipment, and repair and minor remodeling or construction of school facilities. Other activities may include community service programs; consumer education; purchase of computer hardware and software; programs to hire and support school nurses; school-based mental health services; programs for cardiopulmonary resuscitation training in schools; and parent and community involvement. The program has its own provisions for the equitable participation of nonprofit (sic) private school students, teachers and other education personnel” (U.S. Department of Education, NCLB Summary, p. 5; and Section 5142(a)(b)(c), pp. 1785-1786).

- ***Title V, Part D, Subpart 6 – Gifted and Talented Students***

Section 5466(a) mandates that provision is made for the equitable participation of students and teachers in private nonprofit elementary schools and secondary schools, including the participation of teachers and other personnel in professional development programs serving gifted and talented students (p. 1828).

F. Title VI - Flexibility and Accountability

Section 6123(d)(e) provides options for SEA’s and LEA’s to transfer a portion of program funds from a designated program to other specified programs that better address their needs. Each of the programs covered by the transferability authority is subject to the equitable participation requirements. The law requires SEAs and LEAs to conduct consultations with nonprofit private school officials prior to making any decision regarding the transfer of funds that could affect the ability of nonprofit private school students and teachers from benefiting from programs for which they are eligible. The SEA or LEA must also provide equitable services to nonprofit private school students and teachers from the overall funds available for a program, including the transferred funds. An SEA or LEA may not transfer

funds to a particular program solely to provide services for nonprofit private school students and/or teachers. Rather, nonprofit private school students and teachers will receive equitable services from the SEA/LEA under the program to which the funds are transferred (pp. 1877-1878).

V. Carryover and Tydings Amendment

Federal Law (Tydings Amendment) provides that certain federal funds not obligated during the first year allotment shall remain available for obligation and expenditure for one additional year. Most allotments that carry over must be approved annually.

VI. Supplementation of Funds

Federal funds received are to be used to supplement, not supplant, non-Federal funds that would otherwise be used for activities authorized under the above Title programs (Section 1120A(b), p. 1511; Section 1251(i), p. 1570; Section 2113(f), p. 1627; Section 2123(b), p. 1633; Section 2202(a)(4), p. 1644; Section 2413(b)(6), p. 1676; Section 3115(g), p. 1700; Section 3224(f), pp. 1719-1720; Section 4113(a)(8), pp. 1739-1740; Section 4114(d)(4), p. 1744; Section 4123(b)(3)(C), p. 1753; Section 4203(a)(9), p. 1768; Section 4204(b)(2)(G), p. 1770; Section 5144, p. 1788; Section 5205(b)(3)(C), p. 1797; Section 6141(c)(1)(L), p. 1880; Section 6141(c)(2)(B)(iii), p. 1881; Section 6151 (c)(9), pp. 1886-1887; and Section 6232, p. 1897).

VII. Reference

U.S. Department of Education, Office of Non-Public Education (2002). The No Child Left Behind Act of 2001: Benefits to private school students and teachers. In *NCLB Summary*. Washington, D.C.